

**COMMITTEE ON RULES OF PROCEDURE
IN DOMESTIC RELATIONS CASES**

Draft Minutes

Friday, August 8, 2003

10:00 a.m. – 4:00 p.m.

ARIZONA COURTS BUILDING

Conference Room 119

1501 W. Washington, Phoenix, Arizona

Teleconference #: 602-542-9003

Members Present:

Hon. Mark Armstrong, Chair

Annette T. Burns, Esq.

Hon. Norm Davis

Annette Everlove, Esq.

Deborah Fine, Esq.

Bridget Humphry, Esq.

Hon. Michael K. Jeanes

Phil Knox

Janet Metcalf, Esq.

Hon. Dale Nielson

Richard Scholz, Esq.

Robert Schwartz, Esq.

Debra Tanner, Esq.

Hon. Nanette Warner

Members RSVP (unable to attend):

Hon. Monica Stauffer

Brian W. Yee, Ph.D.

Staff Present:

Konnie K. Young

Isabel Gillett

Guest:

Karen Kretschman

Theresa Barrett

Quorum: Yes

1. Meeting Called to Order: Judge Armstrong

Judge Armstrong called the meeting to order and welcomed everyone, and all present members introduced themselves. Judge Armstrong stated that he views this as a really significant and important challenge and opportunity for the committee to arrive at new rules for family law/ domestic relations cases. He shared an objective for the committee—that he hopes the outcome of the Committee’s work will be one set of independent rules that will make family court procedures more predictable, and that everyone involved in family cases can look toward and know what to expect when they come to family court or domestic relations court.

2. Reasons for Committee

Judge Armstrong stated that the committee has almost unlimited flexibility in terms of the content, but there are probably three overriding principles for the Committee:

- 1) The Committee will create a comprehensive, separate, independent set of rules and procedures for domestic relations cases;
- 2) The rules will only deal with DR cases, not with integrated family court cases or probate, but just family court/ domestic relations cases;
- 3) The Committee will work to reduce and consolidate local rules to the extent that it is entirely practicable.

A. Review of Handouts

Judge Armstrong reviewed the history of the effort behind the creation of this Committee, which he stated is somewhat, but not entirely, recent.

1) Administrative Orders Nos. 2003-23 (Tab 1) and 2003-63 (Tab 2)

Judge Armstrong explained that AO 2003-23 (Tab 1) created pilot projects for integrated family courts in Coconino, Pinal, and Maricopa Counties, but this Order was also the first to address the establishment of a statewide rules committee to examine and recommend rules of practice in family law and domestic relations cases. Judge Armstrong stated that he included this Order to allay any concerns about the committee going beyond the scope of domestic relations—that this is just the first Order to address the creation of the domestic relations/ family law rules committee.

Judge Armstrong directed the Committee to look next at AO-2003-63 (Tab 2), which was filed June 2, 2003 and is actually the Order that created the need for this Committee. Judge Armstrong read from this Order, specifically, the paragraph regarding the purpose of the Committee on the first page: “The Committee shall review current statewide and local rules of procedure, evidence and alternative dispute resolution applicable to domestic relations cases as well as those used in other states, identify areas in which the current rules impede the fair and efficient disposition of domestic relations cases and propose substitute or additional rules as needed.”

2) Recommendation for Creation of a Statewide Rules Committee

Next, Judge Armstrong directed the Committee to turn to his Recommendation for the Creation of Statewide Rules Committee to Design Rules of Procedure for the Family (Domestic Relations) Court (Tab 3). Judge Armstrong explained that this was his proposal for the creation of this committee, and he discussed the 11 enumerated reasons advanced by Hon. Arline Rotman (Ret.), AFCC Human Resources Committee Chair, and judges. (These reasons are listed on page 1 of this article following Tab 3 in the binder).

B. Time Table

Judge Armstrong stated that the Chief Justice would like for the Committee to have some product within a year, or by next summer. Karen Kretschman (AOC) stated that having an initial draft by March would allow for the necessary time to perfect the product and gain the necessary approvals in accordance with the one-year timeline set forth in the Order.

3. Development of Goals and Mission Statement

A. Goals of Committee Members

Judge Armstrong asked each member to share his or her initial thoughts about the task of developing separate and independent rules for family law cases. Members shared goals, problems, and issues they hoped to see addressed by the Rules Committee; Judge Armstrong recapped the predominant 26 themes raised by Committee:

- 1) Make an effort to stabilize families early on and reduce time to Temporary Orders;
- 2) Make an effort to differentiate the categories of cases, so different types of cases are treated differently and appropriately;
- 3) Provide closure in cases and address the delay in decision making;
- 4) Address *pro se* litigants' needs to have rules that are understandable and simplified;
- 5) Change attitudes in regard to family law cases being viewed as the "step-child" of the system—family law litigants should be given the same opportunity to speak in a meaningful context;
- 6) Address current disclosure rules as well as the need for a disclosure statement that is more effective;
- 7) Address the need for time frames;
- 8) Address the issue of notice in IV-D cases;
- 9) Address consistency and uniformity in areas of drug testing;
- 10) Address consistency and uniformity and the issues involved with interviewing children;
- 11) Focus on problem solving rather than the adversarial system;
- 12) Address the need for early intervention in the cases requiring parties to take positions in cases as early as possible;

- 13) Address the need for timely disposition of cases;
- 14) Address post-decree processes in the statewide Rules;
- 15) Define “emergency processes”;
- 16) Address the need to have policies and procedures better disseminated and publicized and included in the rules, if possible, and on the web;
- 17) Prioritize serious DR cases, particularly those involving child custody;
- 18) Look at the tendency of Motion to Set procedures that may increase delay—more active early judicial management may have alleviated this concern;
- 19) Provide better coordination of ancillary services for the benefit of litigants;
- 20) Possibly relax rules of evidence for family law cases;
- 21) Address the need to be cognizant of domestic violence issues in ADR processes to insure the safety of the litigants and any children involved;
- 22) Make greater use of private mediation to address all issues (i.e. Family Mediation Roster in Maricopa County);
- 23) Do not create a separate set of rules for *pro se* litigants;
- 24) Keep in mind and be cognizant of cultural differences among counties as the Committee creates statewide rules;
- 25) Address issues regarding personal identifying information;
- 26) Address confidentiality in pleadings generally, but particularly before service.

Judge Warner added that the Committee should be cognizant of areas where it might be able to draft suggestions for legislation in areas such as the release of public information. Judge Armstrong agreed and stated that the Committee is poised to be able to make recommendations to other committees such as the Domestic Relations Committee.

B. Development of the Mission Statement

After some discussion, the Committee arrived at a draft of the mission statement.

Break for Lunch

C. Adoption of the Mission Statement

After more discussion and a few minor revisions, the Committee adopted a mission statement.

Motion: Approve the following mission statement:

The mission of the Committee on Rules of Procedure in Domestic Relations Cases is to establish a comprehensive, statewide set of rules of procedure for domestic relations/ family law cases aimed at achieving fair, effective, uniform and timely resolution of family disputes, using non-adversarial, problem-solving means to the extent possible and appropriate.

Seconded and passed unanimously.

4. Survey of Other States' Rules

Judge Armstrong directed the Committee to turn to Tab 4 in the binder—which includes family court rules from other states—and stated that the use of materials from other states will be left up to Committee members and work groups. Currently, Delaware, Florida, and Hawaii are included in the binder (and on the web site), and Judge Armstrong indicated that Rhode Island Rules will be included, as well. He asked if there were any other states that anyone thought the Committee should review, and after some discussion, it was decided that the Texas Family Law Code would be added for the Committee to review.

5. Survey of Arizona Local Rules

Judge Armstrong noted that local rules from some Arizona counties are provided following Tab 5; they are included in the binder so that the Committee has the local rules all in one place.

6. Rethinking the Rules of Evidence

Next, Judge Armstrong referred to an article entitled, Rethinking the Rules of Evidentiary Admissibility in Non-jury Trials (by John Sheldon and Peter Murray). Judge Armstrong summarized the article stating that sometimes application of the rules of evidence may be unfair when there are *pro se* litigants. The authors also advocate relaxing the rules of evidence in non-jury cases, using the same type of standard used in administrative hearings, in which 1) any relevant evidence may be admitted, and 2) any hearsay evidence may be admitted if it is reliable. Judge Armstrong called for comments about the concept of relaxation of rules of evidence for the domestic relations rules product.

There was some discussion about the difficulties judges face when *pro se* litigants are not able to introduce evidence because they lack the knowledge of the rules of evidence, or cannot admit medical evidence because they lack the necessary foundation. Some members commented that it is also difficult when there is an attorney on one side and a *pro se* litigant on the other.

It was also suggested that for documentary evidence, the rules should be relaxed because it makes it very expensive to get divorced. But people tend to testify rather loosely, so perhaps hearsay rules should be adhered to for testimony. Judge Armstrong stated there seemed to be some consensus about the relaxation of the rules of evidence for documentary evidence, but the Committee will need to explore the issues raised by the Committee in greater depth before making any decisions regarding the relaxation of the rules of evidence.

The Committee also discussed disclosure issues and the possibility of tightening up disclosure during pre-trial. Committee members also asserted that Temporary Orders should not be relaxed. Furthermore, Committee members pointed out the need for judges to educate *pro se* litigants about the rules of evidence, the need to remember that judges have discretionary power on many issues in family court, and the need to be sensitive to the public's impression of family court as fair or unfair.

7. Some Specific Ideas:

Judge Armstrong directed the Committee to look at some ideas that have been proposed from outside of the Committee that the Committee might address. Following are specific ideas or proposals that the Committee may consider.

A. Family Law Limited Representation

Judge Armstrong directed the Committee to look at the material provided (following Tab 7 in the binder) from the Volunteer Lawyers Program and entitled, *Encouraging Increased Representation for Family Law Litigants with Low & Moderate Incomes*. He stated that the Arizona State Bar and the Maricopa County Bar have been discussing ideas to more formally recognize limited scope representation in family court cases and to codify by rule, as well as provide some procedures for limited scope representation. He discussed some new limited scope representation rules from California and called for discussion from the Committee.

Some Committee members expressed agreement, and there was discussion regarding ethics opinions on limited scope representation. Judge Armstrong requested to have Fran Johansen speak at a future date about limited scope representation and any ethics opinions that might have been expressed in this area. Committee members discussed the importance of informed consent and a detailed representation agreement that defines limited scope and duration of representation. Concerns regarding liability, malpractice, and attorney withdrawal were discussed.

Judge Armstrong mentioned that the Family Lawyers Assistance Program (FLAP) is already providing limited scope representation in some aspects. Judge Armstrong said that the Committee was close to consensus to at least make some recommendations regarding limited scope representation for statewide rules.

B. Elimination of Default Paternity Hearings

Judge Armstrong directed Committee members to look at the material (following Tab 8) regarding *Elimination of Default Paternity Hearings*, which is a proposal for the Committee's consideration made by the Statute Clean-up Work Group, a work group of the Legislative Child Support Committee.

C. Consolidation/ Reduction of Local Rules

Judge Armstrong stated that this is one of the Committee's primary overriding principles; therefore, the Committee will be looking into this.

D. Family-specified ADR, Disclosure and Discovery Rules

Judge Armstrong stated that these areas are also primary principles and will be explored by the Committee.

E. Pleading Requirements for Support Non-Compliance

Judge Armstrong noted that this area goes along with the Committee's earlier discussion regarding getting away from notice pleadings and requiring specificity in terms of support enforcement proceedings.

8. Committee Assignments and Workgroups

Judge Armstrong explained that the Committee can have subcommittees—comprised of Committee members—to complete assignments, and also the Committee could utilize workgroups, which could also include people available outside of the Committee to work on Committee assignments.

Judge Armstrong stated that those applicants who were not selected for the Committee might be available to contribute as members of workgroups. Judge Armstrong said the Committee would probably utilize workgroups to allow the flexibility needed to include members from outside of the Committee. Judge Armstrong listed possible areas for workgroups or subcommittees:

Workgroup Areas:

- 1) ARCP**
- 2) Local Rules**
- 3) ADR**
- 4) Discovery**
- 5) Default Proceedings**
- 6) Disclosure--**
- 7) Post-decree Proceedings**
- 8) Pre-trial**
- 9) Limited scope representation**

Judge Armstrong volunteered to complete the first task (ARCP) and stated that he is going to pull out rules that do not apply or do not fit well in family law or domestic relations cases.

There was a question about possible duplication of effort—i.e. pre-trial group and local rules—and a suggestion that there may be a separate local rules group, that all workgroups should look at local rules for each area.

Judge Davis and Phil Knox suggested that it would be helpful to come up with a framework or a consensus of structure before the initial drafting stages or working on specific elements.

A subcommittee was formed to develop a Table of Contents or Outline of elements for the next meeting.

Table of Contents/ Outline of Elements Subcommittee:

Honorable Norm Davis (Chair)
Honorable Michael K. Jeanes
Honorable Nanette Warner
Phil Knox

9. Future Meetings (Konnie Young, Committee Staff)

Two meeting dates and locations were changed following discussions by the members present. A new list of meeting dates and locations will be distributed at the next meeting and posted at the website.

Following are the revised meeting dates and locations:

REVISED MEETING DATES/ LOCATIONS

(All meetings will be held at Arizona Courts Building, 1501 W. Washington Street, Phoenix, AZ, unless otherwise noted.)

<u>Date</u>	<u>Location</u>
8/29/03	Room 345 A/B
9/26/03	Room 230
10/14/03	Judicial Education Center (formerly the Mercado) 541 E. Van Buren, Suite B4—Gold & Copper Conf. Rms. Conference Call # 602.542.9001
11/17/03	Room 119 A/B
12/12/03	Room 119 A/B
01/16/04	Room 119 A/B

10. Call to the Public:

There were no public members in attendance.

11. Adjournment: Judge Armstrong

The meeting adjourned at 2:30 pm.